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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/644,105 | 08/15/2003 | Walter Scott | 14232.4001 | 6497 |
| 34313 | 7590 | 11/04/2004 | EXAMINER | |
| ORRICK, HERRINGTON & SUTCLIFFE, LLP 4 PARK PLAZA SUITE 1600 IRVINE, CA 92614-2558 | | | GEHMAN, BRYON P | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3728 | |

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/644,105 | Applicant(s) SCOTT, WALTER | |
| | Examiner Bryon P. Gehman | Art Unit 3728 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/28/03</u> . | 6) <input type="checkbox"/> Other: _____ |

1. The drawings are objected to because Figure 1 appears to be a combination of two dimensional representation of at least the lumen 38 while the remainder of the Figure is in three dimensions. Correction is required.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 5-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Halleck (3,314,194). Disclosed is a closed container system comprising a body defining a lumen (40) having a base (opposite 42) and a top (42), a subcontainer (12), a lid (27) and a tapered lumen (36 or 38) in the lid narrower further away from the face of the lid to provide access to roots of a plant and to act prevent leakage of hydrogel out of the subcontainer. The reference to hydrogel in these claims is imaginary, as "adapted" does not include or define structure, only capability.

As to claim 2, the tapered lumen is cylindrical.

As to claims 5 and 6, the body is elongate and transparent.

As to claim 8, the reference to imaginary plant food in the imaginary hydrogel fails to alter the claimed system.

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6, 8-18, 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahlson (2003/0047474) in view of McKenzie (3,973,355). Dahlson discloses a closed container system comprising a body (10) defining a lumen having a base (14B and 16B) and a top (14H and 16H), a subcontainer (64) containing aqueous gel (hydrogel), a lid or divider (66) and an opening in the lid or divider to provide access to roots of a plant and to act prevent leakage of hydrogel (disclosed aqueous gel) out of the subcontainer. McKenzie discloses (Figures 10 and 11) providing an opening defined by a tapered lumen (30 or 20). To modify the apertured lid (66) of the container system of Dahlson employing the tapered lumen shape of McKenzie would have been obvious in order to provide access to aqueous gel through a lid portion.

As to claims 2-4 and 13-16, the exact shape of the tapered lumen would be a matter of design choice.

As to claims 5-6, 11-12 and 17-18, the body of Dahlson is elongate and transparent.

As to claim 8, the reference to imaginary plant food in the imaginary hydrogel fails to alter the claimed system.

As to claims 9 and 22, Dahlson discloses a hook (96).

As to claim 20, the divider (66) includes an outer rim.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of either one of Van Zyl (4,075,786) and Wulf et al. 4,915,224). Each discloses a transparent subcontainer (12; 16) for a plant. To modify the subcontainers of the prior art employing the transparency teaching of either one of Van Zyl and Wulf et al. would have been obvious in order to allow viewing of the interior of the subcontainer.

7. Claims 8 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 10 above, and further in view of Chadwick. Chadwick discloses plant food added to a hydrogel to nourish a plant. To modify the structure of the prior art further employing plant food in the hydrogel would have been obvious in view of Chadwick in order to nourish the plant.

8. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 10 above, and further in view of Weder et al. (2001/0035364). Weder et al. disclose a transparent divider/lid (12) for a plant container. To modify the structure of the prior art further employing a transparent divider/lid as taught by Weder et al. would have been obvious in order to allow viewing of the interior of the subcontainer.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 10-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 11 and 12, "the lumen" is indefinite, as claim 10 defines two distinct lumens. In claims 13-16, "the tapered lumen" lacks antecedent basis.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are assorted plant container subsystems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is presently (703) 605-1174 and effective November 9, 2004, becomes (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached presently on (703) 308-2672 and after November 9, 2004 on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-4555 effective November 8, 2004.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG